No. 404

In the Supreme Court of the United States

OCTOBER TERM, 1952

WARNER D. ORVIS, HOMER W. ORVIS, FLOYD Y. KEELER, F. HOWARD SMITH, HAROLD A. ROUSSELOT, HENRY H. BALFOUR, J. ANTONIO ZALDUONDO, WILLIAM G. WIGTON, CLIFFORD J. DOERLE, AND HERBERT R. JOHNSON, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF ORVIS BROTHERS & CO., AND JOHN J. McCLOSKEY, JR., AS CITY SHERIFF OF THE CITY OF NEW YORK, PETITIONERS

v.

JAMES P. McGRANERY, ATTORNEY GENERAL OF THE UNITED STATES, AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT

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OPINIONS BELOW

The decision of the District Court (R. 45) is not reported. The opinion of the Court of Appeals (R. 49) is reported at 198 F. 2d 708.

JURISDICTION

The judgment of the Court of Appeals (R. 53) was entered on June 30, 1952. A petition for rehearing filed on July 14, 1952 (R. 54) was denied on July 29, 1952 (R. 55). The petition for a writ of certiorari was filed on October 21, 1952 and was granted on December 15, 1952 (R. 57). The jurisdiction of this Court rests on 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether a creditor who had levied an attachment, not licensed under Executive Order No. 8389, as amended, on blocked property of his enemy debtor, which is later *res* vested and transferred to the possession of the Alien Property Custodian, may recover, by suit under Section 9 (a) of the Act, an "interest, right, or title" in the property.

STATUTES, EXECUTIVE ORDERS AND REGULATIONS INVOLVED

The pertinent statutory provisions and orders and regulations issued thereunder are set forth in the Appendix, *infra* (pp. 49–65).

STATEMENT

The facts are not in dispute. Petitioners (except the Sheriff) are New York security and commodities brokers known as Oryis Brothers & Co. (Orvis). In 1934 they opened a margin account in favor of Takenosuke Itoh, which was guaranteed by C. Itoh & Co., Ltd., later succeeded by Sanko

Kabusiki Kaisya, ("Sanko"). All three were Japanese nationals (R. 22–23). This account was closed out in March, 1938, at which time the customer was indebted to Orvis in the amount of $43,341.37. Before the outbreak of war this indebtedness had been reduced to approximately $19,796.85 (R. 23). In June, 1943, Orvis commenced an action on the debt in the Supreme Court of New York, New York County, and on December 3, 1943, secured judgment for $20,714.84 against Sanko (R. 23, 24). On June 28, 1943, Orvis had caused a warrant of attachment to be levied on a debt owing to Sanko by Anderson, Clayton & Co. (R. 24). Orvis and the Sheriff also commenced an action in aid of attachment against Anderson, Clayton & Co., and on October 28, 1946, secured a judgment of $5,136.09, conditioned on plaintiffs' securing a license under Executive Order No. 8389 (R. 14, 24). Thereafter, a larger indebtedness from Anderson, Clayton & Co. to Sanko was discovered and on February 20, 1948, the judgment was amended *nunc pro tunc* to provide that Orvis should recover of Anderson, Clayton & Co. the sum of $29,633.24 to be applied in satisfaction of the judgment against Sanko and fees, costs, and disbursements (R. 25–26).

At the time of the levy of attachment, the property of Sanko was blocked under Executive Order No. 8389, as amended. Petitioners did not apply for or obtain a license authorizing the attachment. Petitioners did apply, on or about November 20,

1946, for a Treasury license to permit Anderson, Clayton & Co. to pay the funds in its possession to the Sheriff, and this was denied on February 15, 1947 (R. 14, 24).

The Sanko funds in the hands of Anderson, Clayton & Co. were vested under the Trading with the Enemy Act as enemy-owned property by *res* vesting orders issued on June 27, 1947, and November 25, 1947, and the Alien Property Custodian secured possession of the funds (R. 14–15, 25). Before the vesting orders had been issued, however, petitioners filed a notice of claim with the Custodian. This was treated by the Custodian as including another application for a retroactive license and such a license was denied (R. 16).

In 1949 the Claims Branch of the Office of Alien Property moved to dismiss petitioners' notice of claim insofar as it was a claim for the return of a property interest in the vested property. To this extent the claim was dismissed by the Hearing Examiner, and his action was upheld by the Director of the Office of Alien Property (R. 16–17). To the extent that the claim seeks payment of a debt under Section 34 of the Act, it is still pending.

Prior to this dismissal, *pro tanto*, of petitioners' administrative claim, petitioners brought this action on April 28, 1949 (see R. 1), under Section 9 (a) of the Trading with the Enemy Act, seeking a decree declaring that they have a lien on the

vested property superior to the rights of the respondent, that the respondent holds the property subject to their lien, and that the orders *res* vesting the property in question were valid and effective only to the extent of any surplus that might remain after the property had been first applied to the satisfaction of petitioners' claim, and requiring respondent to pay to the Sheriff such part of $29,633.24 as is necessary to satisfy petitioners' judgment, with interest and costs (R. 18–19).

After answering, respondent moved for judgment on the pleadings and petitioners cross-moved for summary judgment (R. 21, 22). The District Court denied respondent's motion and granted petitioner's motion on the authority of *Zittman* v. *McGrath*, 341 U. S. 446 (R. 45).[1]

The Court of Appeals reversed (R. 53), holding that the respondent was entitled to hold the

[1] The District Court awarded the petitioners interest on the judgment of the New York Supreme Court of December 3, 1943, against Sanko. We contended below that this was error (a) because, after freezing and prior to vesting, payment of the debt by Sanko was impossible in the absence of a Treasury license and hence no liability for interest could arise, *Todeva* v. *Oliver Mining Co.*, 232 Minn. 422, 432–433, 45 N. W. 2d 782, 790, and (b) because upon vesting the money became property of, and the debt the debt of, the United States and Congress has not consented to liability for interest. The Court of Appeals did not reach that question, since it denied recovery altogether. In the event this Court should hold petitioners entitled to recover in this action, we suggest that the question of allowability of interest may appropriately be considered by the Court of Appeals on remand.

vested assets for administration under Section 34 of the Act and that petitioners had no "interest, right, or title" in the property which they could recover from the respondent in a suit under Section 9 (a) (R. 49–52).

ARGUMENT

INTRODUCTION AND SUMMARY

The issue here is one of creditors' rights and remedies against enemy property vested by the Alien Property Custodian. Petitioners' claim rests on unlicensed post-freezing attachments like those involved in the two cases of *Zittman* v. *McGrath*, 341 U. S. 446, and 341 U. S. 471. In those cases, this Court decided that as between private debtor and creditor, the attachments created a valid lien securing the debt. But it said that "of course, as against the custodian, exercising the paramount power of the United States, they do not control or limit the federal policy of dealing with alien property" (341 U. S. at 464).

In the present proceeding, the Custodian has exercised his power to "take over the entire fund for administration" (341 U. S. at 464). The question is how he shall administer vested funds. Hence we turn first to the policies which Congress has laid down to control the Custodian in the administration of vested enemy property, and the payment of creditors' claims out of such property.

Congress has established, in Section 34 of the Act, an administrative procedure for the payment of debt claims, with a right of judicial review confined to the district court for the District of Columbia. That procedure is available to these petitioners. Their present action, however, brought in the district court for the Southern District of New York, asserts a lien interest, said to have been acquired as a result of attachment proceedings brought in New York in 1943, which petitioners seek to recover independently of, and without regard to, the general debt claim proceedings provided by the Act. We believe that to permit such a recovery here would frustrate the purpose of Congress to preserve enemy property for equitable distribution to all creditors ratably.

The inconsistency between the disposition of creditors' claims which Congress prescribed and that for which petitioners here contend is clear: (1) where Congress limited payment of debt claims to those of American citizens, petitioners' position would require payment to alien creditors; (2) where Congress provided for equitable distribution to creditors, *pro rata*, petitioners seek payment in full without regard to claims of other creditors; and (3) where Congress established a centralized proceeding before the Custodian, with review confined to a single district court, petitioners seek payment of their claims in a separate proceeding which is not only without reference to,

but will have the effect of suspending, the general debt claim proceeding.

We may agree that all of these consequences would occur in the case of a proceeding by one who had a valid pre-freezing property interest, since to the extent of such interest the property would not be enemy and hence not within the Custodian's power to hold and administer. But petitioners, at the time of the freeze and for two years thereafter, were general creditors only. To hold that by actions taken after the freeze date they converted their position from that of general creditors to that of secured creditors, thereby acquiring all the advantages which the Act gives to secured creditors, is to say that the freeze was ineffective to maintain enemy property in *status quo*. A major purpose of the freeze, as its name implies, was to preserve the right of Congress to decide upon the disposition of enemy property, as it did *inter alia* in Section 34 which was adopted in 1946. Accordingly, the Treasury was at pains to avoid allowing any preferential payment to one creditor which might frustrate a possible Congressional purpose to provide for equitable distribution. Conditions in June and July of 1941, shortly before the outbreak of a major world war, obviously did not permit permanent legislation. The device of a freeze was used to keep enemy property intact for possible vesting in order that the legislative policies which Congress might later adopt could be applicable

to it, unprejudiced by intervening transactions.

What petitioners' contention comes down to is that the Congressional policies relating to payment of creditors' claims are made inapplicable here by post-freezing transactions for which no license was obtained. They argue that, having had on the freeze date no "interest" in the vested property which was cognizable under Section 9, they acquired such an interest, and the important rights flowing from it, by an unlicensed post-freezing transaction. We believe such a contention disregards both the language of the freezing regulations and their purpose to preserve all property for later disposition by Congress as well as for war use.

Equally invalid, we believe, is petitioners' assertion that the acquisition of such an interest was licensed. In authorizing the obtaining of state court judgments, the Treasury was not licensing the creation of new property interests which would defeat the valid claims of other creditors and frustrate the policies which Congress might adopt with respect to the disposition of enemy property. In permitting judicial establishment of the validity of a claim, it plainly did not mean to license a change in its nature from a debt claim to a property claim.

The issue here is thus fundamentally different from that in *Zittman* No. 1, 341 U. S. 446. In that case this Court expressly recognized the power of the Custodian to take over funds for administra-

tion. Here petitioners seek to end his administration of the funds and to prevent their disposition in accordance with the procedures and policies established by Congress. In that case, the Court found that recognition of an attachment "lien," as between private parties, did not infringe freezing policies, because such a lien involved no transfer of title or possession, and federal controls over payment of the funds were preserved. Here petitioners seek unqualified and absolute recovery of the entire interest in the funds, as property which they acquired, if at all, long after freezing. Such a result would frustrate the power of the United States to dispose of enemy property within its jurisdiction, and would deny the effectiveness of the freeze to preserve enemy property intact for future legislative disposition.

I. ALLOWANCE OF THE PRESENT ACTIONS WOULD CONTRAVENE THE LEGISLATIVE POLICIES APPLICABLE TO PAYMENT OF CREDITORS' CLAIMS

A. *The remedies of creditors under the Trading with the Enemy Act*

As enacted in 1917, Section 9 (a) of the Trading with the Enemy Act provided that, "any person, not an enemy, or ally of enemy, claiming any interest, right, or title * * * or to whom any debt may be owing from an enemy, or ally of enemy, whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the alien property custodian,"

might sue the Custodian or the Treasurer of the United States therefor (40 Stat. 419, Appendix, *infra*, p. 49).

This remedy under the original Section 9 (a) was available to all non-enemies, regardless of citizenship or residence, and it was equally available whether the party claiming under the statute sought the return of a specific interest in the seized property or the payment of a debt from the former enemy owner. In either case the claimant might file suit immediately after filing a notice of claim, and upon the filing of suit the Custodian was forbidden to liquidate or otherwise dispose of the money or property sued for.

In 1920 Section 9 (e) was added. The amendment denied recovery of debt claims to citizens or subjects of countries associated with the United States in the prosecution of World War I unless in the same situation such nations afforded reciprocal rights to citizens of the United States; it limited the payment of debt claims to debts due and owing prior to October 6, 1917, and provided that debt claimants who were not citizens of the United States could not recover unless the debt "arose with reference" to the vested property.[2] 41 Stat. 977, 980.

Upon the outbreak of World War II, it was doubtful whether the remedy of Section 9 (a) con-

[2] See *Banco Mexicano* v. *Deutsche Bank*, 263 U. S. 591. After 1920, further amendments were made which are not material here.

tinued available to debt claimants. Hence the Custodian paid no debt claims, although allowing them to be filed with him (testimony of Mr. James E. Markham, Hearings before Subcommittee No. 1 of the House Committee on the Judiciary, 79th Cong., 2d Sess., on H. R. 5089, p. 7). And, as we shall develop hereafter, *infra,* pp. 24–34, the Treasury Department generally denied licenses for payment of debts out of frozen enemy property which had not yet been vested.

In May 1944, the Alien Property Custodian presented to the 78th Congress a bill, H. R. 4840, providing *inter alia* for payment of debt claims; hearings were held, but the bill died. Meanwhile, this Court, in *Markham* v. *Cabell,* 326 U. S. 404 (1945), held that the remedy of Section 9 (a) was still available, but left open the question whether, in the light of the 1941 amendments to Section 5 (b) of the Act, debt claims could be satisfied. 326 U. S. at 412–413. In the 79th Congress, legislation providing for payment of debt claims was again introduced, and on August 8, 1946 (60 Stat. 925), Congress enacted Section 34 of the Act "to provide machinery for paying claims of creditors against the former owners of vested properties." Senate Report No. 1839, 79th Cong., 2d Sess., p. 2.

Section 34, Appendix, p. 51, *infra,* made important changes in the prior scheme for the payment of debt claims. Thus it restricted the class of creditors who could recover. Non-enemy creditors as a class were no longer entitled to payment

of debts out of property vested by the United States; that right was given only to citizens and residents of the United States, citizens of the Philippine Islands, and corporations organized under the laws of both nations. In addition, certain classes of persons were declared ineligible to recover debt claims, and claims arising out of actions or transactions prohibited by and not licensed pursuant to the Act were barred (Section 34 (a)).

Section 34 set up a comprehensive scheme which changed the system of the payment of debt claims from "* * * 'first come first served' to 'equitable distribution.'"[3] To implement the change, Congress provided an administrative remedy and made it exclusive for debt claimants (Section 34 (e), (f), (i)). The Custodian was to fix bar dates (Section 34 (b)), and to examine all debt claims and make a determination of allowance or disallowance in whole or in part (Section 34 (e), (f)). If the available assets were insufficient to pay allowed claims in full, *pro rata* payments were to be made, subject to certain priorities (Section 34 (f), (g)). The Custodian's determinations were reviewable in the district court for the District of Columbia (Section 34 (e), (f)). It was provided that a creditor could not compel the Cus-

[3] Sen. Rep. No. 1839, 79th Cong., 2d Sess., pp. 3–4; H. Rep. No. 2398, 79th Cong., 2d Sess., pp. 9–10.

todian to liquidate vested property in order to satisfy his debt claim (Section 34 (d)).

Section 34, as we have pointed out, was made the exclusive remedy for the satisfaction of debt claims (Section 34 (i)). However, that remedy was without prejudice to the right of any person asserting an "interest, right, or title" in vested property to proceed under Section 9 (a) of the Act (*id.*). Thus, with the passage of Section 34, the nature of the remedy available under the Act to a claimant was made dependent upon whether he had an interest in the property itself or an *in personam* contract claim[4] against the former enemy owner. *Alley* v. *Clark*, 71 F. Supp. 521 (E. D. N. Y.). No special remedy was provided for secured creditors who claimed both an interest in the property and a right against the former owner. They were given an option: they could proceed under Section 9 (a) for recovery of a property interest, or under Section 34 for recovery of a debt, or both.[5]

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[4] Cf. *Miller* v. *Robertson*, 266 U. S. 243, and *Stasi* v. *Markham*, 69 F. Supp. 163 (D. N. J.).

[5] This was the clear intent of Congress. See Senate Report No. 1839, 79th Cong., 2d Sess., p. 9, accompanying S. 2378 and House Report No. 2398, 79th Cong., 2d Sess., p. 15, accompanying H. R. 6890. Both reports stated in identical language:

"Protection of a secured creditor or a creditor claiming a lien is afforded by the proviso in subsection (i). Such a claimant may proceed as a general creditor, thereby waiving his security. In addition or alternatively, he may file a claim or suit as a title claimant for return of his security interest in the property or for just compensation in respect of

The Act, as amended, specifically provided that no debt claim could be paid out of property as to which a Section 9 (a) suit was pending (Section 34 (b)). Moreover, as a practical matter, the filing of a Section 9 (a) suit for the recovery of property formerly belonging to an enemy puts a halt to the administrative processing of all debt claims which have been filed against the property. This is because the Custodian is required not only to determine the validity of claims but must also, if the vested assets are insufficient to pay all claims established, determine priorities and provide for *pro rata* payments (Section 34 (f)). Until the amount which will remain in the Custodian's hands for distribution is definitely known, it is pointless to set schedules of priorities and payments.

B. *The objectives of the present debt claims provisions*

As the foregoing summary indicates, the policies which Congress has established to govern the disposition of debt claims asserted in respect of enemy property vested during World War II reflect a substantial change from those applied during World War I. The new policies, adopted

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that interest, in which event his recovery would be reduced, as in the case of any other such plaintiff, to the extent of any debt-claim payment made to him (or to any other claimant, if his claim as a title claimant was not filed in time to hold up debt-claim payments). It is believed that this arrangement is preferable to provision of a separate special procedure for secured creditors."

after considerable deliberation,[6] embody a consistent federal program for the disposition of such debt claims. We believe Congress intended that those policies should govern all enemy property which became vested. Only those with a true "right, title, or interest" in vested assets were to be permitted recovery apart from that legislative scheme. In Part II, we set forth the affirmative grounds for our position that petitioners have no such property interest. We shall here point out the extent to which a determination that petitioners do have a "right, title, or interest" in the vested property would defeat application of the uniform federal policies adopted by Congress in Section 34.

In the first place, Congress limited payment of debt claims to those of American citizens and residents. Pointing out that available assets would in many cases be insufficient to pay American creditors, and that "to permit all friendly aliens to file debt claims might seriously reduce the general surplus of enemy assets available to this Government for ultimate disposition in the general pub-

[6] See, e. g., Hearings before Subcommittee No. 1 of the House Committee on the Judiciary, 78th Cong., 2d Sess., on H. R. 4840, *passim*; Hearings before Subcommittee No. 1 of the House Committee on the Judiciary, 79th Cong., 2d Sess., on H. R. 5089, pp. 11–14, 17, 49, 51, 62–67, 107–159; Hearings before Subcommittee of the Senate Judiciary Committee, 79th Cong., 2d Sess., on S. 2378 and S. 2039, pp. 35, 37–38, 46–50, 67–78, 85, 95–96, 104; H. Rep. 2398, 79th Cong., 2d Sess., pp. 9–15; S. Rep. 1839, 79th Cong., 2d Sess., pp. 3–9; 92 Cong. Rec. 10215–10218.

lic interest," the Committee Reports concluded that foreign creditors should "address themselves to [enemy] property" located in their own countries. S. Rep. 1839, 79th Cong., 2d Sess., p. 5; H. Rep. 2398, 79th Cong., 2d Sess., p. 11.[7] Under petitioners' view, however, a foreign creditor who obtained a post-freezing attachment could recover his debt and thereby either diminish the recovery of American creditors whom Congress sought to protect, or "reduce the general surplus of enemy assets available to this Government for disposition in the general public interest." The attachment laws of many states are available to foreign creditors as well as to Americans. Indeed, several New York attachments of frozen enemy property were obtained on behalf of English and other foreign creditors. In this connection, it may be noted that divergence in result would arise according to the state in which the creditor could find attachable assets. The effect of an attachment or garnishment differs in different states. In some states, service of a writ of garnishment or attachment is deemed to give a "lien" (which on petitioners' theory is an "interest, right, or title" under Section 9 (a) of the Act), while in other states it does not. See Justice Cardozo's dissenting opinion in *Sanders* v. *Armour Fertilizer Works,* 292 U. S. 190, 206–207.

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[7] The United States is not constitutionally obligated to "act as the collection agent for nationals of other countries." *United States* v. *Pink,* 315 U. S. 203, 228.

Secondly, and directly applicable here, it was the policy of Congress to provide for equal treatment of all American creditors. Under Section 9 (a) as applied after World War I, creditors were paid on a "first come, first served" basis. See *United States* v. *Securities Corporation General,* 4 F. 2d 619 (C. A. D. C.), affirmed *sub nom White* v. *Mechanics Securities Corporation,* 269 U. S. 283. A major purpose of Congress in adopting Section 34 of the Act was to avoid that result by providing for "equitable" distribution. The Committee Reports noted that creditors' claims against enemy property amounted to almost three times the value of the vested property of the debtors, and pointed out that "No more cogent demonstration could be made of the need for a system of pro rata payment." S. Rep. 1839, 79th Cong., 2d Sess., pp. 3–4; H. Rep. 2398, 79th Cong., 2d Sess., pp. 9–10. As the Alien Property Custodian testified in presenting the bill, a primary purpose of it was to change the law "so that the man could file his claim, but he would be paid on a ratable basis, if there is not enough money for everybody, and that we should have a marshaling of assets and a marshaling of debts, so that everybody would be treated alike and would not depend upon the time when they brought the suit or the order in which the suits were brought." Hearings before Subcommittee No. 1 of the Committee on the Judiciary, House of Representatives (79th Cong., 2d Sess.) on H. R. 5089, p. 17.

Petitioners are entitled to such *pro rata* payment under Section 34 of the Act. What they here seek, however, is not *pro rata* payment but payment in full in advance of the satisfaction of any other creditor. They seek a reward for diligence. Although on the date of freezing they were merely general creditors, they seek now to be recognized as entitled to prior payment in full, by virtue simply of their having pursued in New York, long after the outbreak of the war, the remedies which that state affords to general creditors.

A third purpose of Section 34, intimately related to the one just mentioned, was to provide for centralized administration of the debt claims program. Congress has provided a unified administrative proceeding under which the Custodian marshals all assets and adjudicates all debt claims against them, and it has limited review of this proceeding to a single court, the district court for the District of Columbia. Such a procedure is obviously necessary if a scheme of equitable distribution and *pro rata* payment is to be put into effect.[8]

[8] "Since the procedure calls for a marshaling of claims and since, on review, the court may have to give consideration to the entire account, it would cause a serious break-down in administrative and judicial procedings if debt claim determinations were reviewed by the several district courts throughout the country. It is believed that the matter must be centralized and no injustice should result." H. Rep. 2398, 79th Cong., 2d Sess., pp. 13–14; S. Rep. 1839, 79th Cong., 2d Sess., p. 7. See also, House Report, p. 12; Senate Report, p. 6.

Petitioners here, however, are proceeding in the Southern District of New York. They seek payment of their claims in advance of and without reference to action on any other debt claim. In this connection, we note that in its opinion in *Zittman* No. 2, this Court would appear to have indicated that petitioners should proceed by way of Section 34 and that their claim to priority should be left for adjudication in such a proceeding. This Court said (341 U. S. at 473–474):

> While the statute under which the funds are to be "held, administered and accounted for" authorizes the vesting of such foreign-owned property in the Custodian and its administration "in the interest of and for the benefit of the United States,"[9] it is not a confiscation measure, but a liquidation measure for the protection of American creditors. It provides for the filing and proving of claims and states that the funds "shall be equitably applied" for the payment of debts.[10] If the Custodian disallows a claim, or if he disallows a claim of priority where claims exceed assets, the claimant may seek relief in the United States District Court for the District of Columbia.[11] The transfer of possession of

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[9] Trading with the Enemy Act of [Oct. 6] 1917, 40 Stat. 411, ch. 106, as amended, § 5 (b) (1), 55 Stat. 839, 50 U. S. C. App. § 5 (b) (1) [Court's footnote].

[10] *Id.* § 34 (a), 60 Stat. 925, 50 U. S. C. App. § 34 (a) [Court's footnote].

[11] *Id.* § 34 (e), (f), 50 U. S. C. App. § 34 (e), (f) [Court's footnote].

these funds does not purport to work any automatic deprivation of rights of any class of creditors, but takes over the estate for administration.

In view of these facts, we decide, and decide only, that the Custodian has power to possess himself of these funds and to administer them. To hold otherwise would be incompatible with the federal program. The consequences, if any, that flow from the substitution of the Custodian in place of the Bank as holder of the funds, upon rights derived from valid state court judgments secured by attachment, are not ripe for determination. They may never come into controversy. All questions as to the petitioners' claims, judgments, or priorities are reserved for decision in the proceedings prescribed by statute.

We do not contend that this Court thereby decided that petitioners' only remedy was Section 34; on the contrary, we believe it expressly refrained from deciding any question as to petitioners' rights or remedies where the Custodian had taken over the fund for administration. But we do suggest that in the event, and only in the event, that this Court should be unwilling now to adopt our major contention that petitioners have no right to priority of payment which the Custodian is required to recognize, either under Section 9 (a) or under Section 34, it may wish to consider the suggestion that any claim to priority

which they may have should be asserted in a proceeding under Section 34, rather than in the present proceeding. See 1 Am. Jour. of Comparative Law 395. It is true that Section 34 (g), establishing certain priorities to be observed by the Custodian, does not refer to rights claimed under attachments. But in view of the statute's general direction that vested property should be "equitably applied" to the payment of debt claims, it might be asserted that the Custodian and the reviewing courts would have jurisdiction, in a proceeding under Section 34, to consider whether any non-statutory priorities should, in equity, be allowed.[12] If they would have jurisdiction to do so, then it would seem that the question whether petitioners' attachments conferred any right to priority might well be deferred for such a proceeding. We believe, however, that in enacting Section 34 Congress was attempting to legislate comprehensively and that it did not intend to permit other priorities than those which it specified. *Cf.* H. Rep. 2398, 79th Cong., 2d Sess., pp. 14–15; S. Rep. 1839, 79th Cong., 2d Sess., pp. 8–9. We therefore do not urge this suggestion, but simply mention it as a possible basis for decision of the present case.

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[12] *Cf. Clark* v. *Uebersee Finanz-Korporation*, 332 U. S. 480, 488–489, holding that the definitions of "enemy" in Section 2 of the Act are "merely illustrative, not exclusionary."

II. PETITIONERS HAVE NO "INTEREST, RIGHT, OR TITLE" IN VESTED PROPERTY WHICH THE CUSTODIAN IS REQUIRED TO RECOGNIZE

As we have indicated, Congress allowed one exception to its scheme for the uniform determination and equitable payment of debt claims. Section 34 (i) expressly provides that said scheme shall not prejudice the right of any non-enemy claiming an "interest, right, or title" in vested property to sue in the appropriate district court for the return of such interest. That reservation preserved the right to return of non-enemy property interests which this Court, in *Becker Steel Co.* v. *Cummings,* 296 U. S. 74, 79–80, held necessary to sustain the constitutionality of the Act.

Petitioners' reliance on that provision here is misplaced. On the freeze date this property was Japanese, and on the outbreak of war it became enemy. At that time petitioners had no interest in it. The "interest, right or title" which they claim was created, if at all, long after both the effective date of the freezing order and the outbreak of the war. What petitioners necessarily contend, therefore, is that they acquired a property interest in enemy assets, after freezing and after the war, without a federal license. We believe that such a contention disregards both the objectives and the terms of the freezing system. We shall first discuss (a) the relevant objectives

of freezing and (b) the terms of the freezing regulations, and then turn to petitioners' further contentions (c) that acquisition of the rights which they here assert was licensed and (d) that, notwithstanding the express reservations in the opinions, all of these questions were really decided in their favor in the *Zittman* cases.[13]

A. *The objectives of freezing*

As the term implies, the purpose of a "freeze" is to maintain matters in *status quo*. This Court clearly so recognized in *Propper* v. *Clark*, 337 U. S. 472, 484:

> The freezing order of June 14, 1941, immobilized the assets covered by its terms so that title to them might not shift from person to person, except by license, until the Government could determine whether those assets were needed for prosecution of the threatened war or to compensate our citizens or ourselves for the damages done by the governments of the nationals affected.

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[13] The objectives of the freezing program and the terms of the applicable regulations were extensively considered by this Court in *Propper* v. *Clark*, 337 U. S. 472, and the *Zittman* cases. So far as possible we shall, in the interest of brevity, avoid repeating what was said in the briefs for the United States in those cases (Oct. Term 1948, No. 390, and Oct. Term 1950, Nos. 298, 314, 299, and 315). Accordingly, we shall concentrate attention upon those aspects of the freezing program which appear to have special relevance to the present case in the posture in which it is now presented.

One of the clearly understood objectives of the freezing system, moreover, was, as Senator Barkley stated in 1940, "to preserve the property * * * for the benefit of Americans who may have claims" (86 Cong. Rec. 5006 (1940)). See also *Zittman* v. *McGrath*, 341 U. S. 446, 454. This objective was explicitly stated by representatives of the Treasury Department during the hearings which led to the adoption of Section 34 of the Act. At the House hearings during the 78th Congress, criticism was expressed of the failure of the bill to make any provision for payment of American creditors out of frozen assets. Hearings before Subcommittee No. 1 of the House Committee on the Judiciary on H. R. 4840, 78th Cong., 2d Sess. (1944), pp. 33–65. Mr. Ansel F. Luxford, Assistant General Counsel, Treasury Department, testified (p. 85):

> Mr. LUXFORD. We take up now one of the major problems of Foreign Funds Control, namely, that of protecting the rights of American creditors.
>
> One of the most important considerations running through the policy of the Foreign Funds Control since its very inception in April 1940 has been that of protecting the rights of American creditors.
>
> I want to emphasize, however, that we conceived our obligation as one of protecting all American creditors and not just a few.

We have always been wary of extending to any particular American creditor a privilege that we could not extend to all American creditors or one that certain creditors could enjoy only at the expense of all the rest.

Naturally, this policy will never be popular with those creditors seeking an advantage over others, but on the whole most creditors have recognized the justice of our position and the fairness with which we have attempted to deal with them all.

I think our record speaks for itself. In over 4 years of operation, during which we have been before congressional committees a dozen times, there has never been an occasion upon which anyone has seriously attempted to challenge the fairness of our dealings with American creditors.

He added (p. 99):

We are holding the assets until this Government might decide as to what it wants to do with them; the Government is the one to make the decision as to what the funds will be used for. And if the Government decides it wants to use the funds for reparations or to pay American creditors the funds will be available.

Mr. ROBSION. That was one of the purposes, so the funds could be used for American creditors, and also perhaps of equal or greater importance, to prevent them from being used by our enemies, the military, against the United States Government.

Mr. LUXFORD. Certainly, and both positions would be ones to which I would subscribe, and I think that the Congress or whatever governmental agency might decide this problem would certainly keep that matter in mind. All I am pointing out is that I do not conceive myself that anyone in the Treasury at this time could make any decision as to what will be finally done.

Mr. ROBSION. You think that the Congress will have to take some action, further action before there is any disposition of these funds?

Mr. LUXFORD. I would think that it would be the very kind of problem that Congress would want to take action on.

Mr. ROBSION. And furthermore, that you do not contemplate any disposition of these funds unless there is some action by the Congress following the peace treaty?

Mr. LUXFORD. I would think that the peace terms would take that into consideration, particularly, when you are talking about enemy assets.

Mr. MICHENER. You want to leave the funds in status quo?

Mr. LUXFORD. Yes.[14]

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[14] See also the subsequent statement of Representative Michener at pp. 100–101: "One of the real purposes of the War Powers Act, insofar as this property is concerned, was for the purpose, not only of protecting American creditors but of permitting the Government to use this property in such ways as it might think necessary in the war effort."

And see the statements of Representative Celler, the Chairman of the House subcommittee, at pp. 35–36. Re-

Similarly, Mr. Elting Arnold, Associate Chief Counsel, Foreign Funds Control, testifying before the House Committee at the 79th Congress, stated, in explanation of the Treasury's refusal to license payment out of Rumanian assets of a debt owing to a Jewish refugee: "We consider in the Treasury it is our duty as to the assets of foreign countries—we have expressed it before this committee on many occasions—to keep the assets tightly frozen until what we have always called an over-all governmental decision is made as to their final disposition." Hearings before a Subcommittee of the House Committee on the Judiciary, 79th Cong., 2d Sess., on H. R. 5089, p. 150. In its report, the House Committee recognized that "Payments from these [frozen] funds have not been made, pending an over-all governmental decision as to their ultimate disposition." H. Rep. No. 2398, 79th Cong., 2d Sess., pp. 11–12.[15]

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sponding to the assertion of Mr. Sommerich that the Treasury Department "has fixed a policy which it is not authorized to fix" (p. 35) Mr. Celler said, "Even Congress could not very well at this time determine any policy—any final policy—as to what should be done finally with either the money held by the Treasury or property or proceeds held by the Alien Property Custodian. Only a peace treaty can give a final answer. Until then we must run along as best we can." (P. 36.)

Representatives Celler, Michener and Robsion were members of the Judiciary Committee in 1941, when that committee reported out the bill which became the First War Powers Act, 1941.

[15] The Committee recommended issuance of special licenses in hardship cases, but did not indicate any disapproval of the general Treasury policy.

In short, the Treasury policy was—in the words of the House Committee (H. Rep. No. 2398, 79th Cong., 2d sess., p. 11)—one of "complete immobilization" of frozen enemy property until such time as the final disposition of that property had been determined upon. That policy extended both to a prohibition of any transfer of the property or any interest in it, and to a refusal to license payment of creditors' claims for fear of preferring one creditor over another. Not only was this policy clearly within the statutory scope of the freezing authority, but the committees of Congress and the business community were fully informed and aware of it.[16] Although that policy was criticized before the House Committee, and asserted to be beyond the authority of the Treasury Department, the Committee not only took no action on proposals to make frozen enemy property available to creditors, but senior committee members of both parties expressed approval of the Treasury policy. (See esp. fn. 14, p. 27 *supra*.)

Such a "wait and see" policy was clearly called for by the circumstances. Freezing was adopted in a time of great international flux and uncertainty. With our entry into the war, enemy property became subject to vesting. But such

[16] The existence of this policy was frequently stated and was widely understood by lawyers and businessmen. See *e. g.*, Sommerich, *Recent Innovations in Legal and Regulatory Concepts as to the Alien and his Property*, 37 Am J. Int. Law 58, 66–67 (1943); Reeves, *The Control of Foreign Funds by the United States Treasury*, 11 Law and Contemp. Prob-

vesting merely took over the property for wartime use, leaving its ultimate disposition for later Congressional determination. Whether and to what extent debt claims would be satisfied out of vested enemy property was highly uncertain. It might be that Congress would decide to apply all vested property to governmental purposes, such as payment of American war claims, undiluted by allowance of any debt claims.[17] And, if debt claims were to be satisfied, the questions as to who would be eligible claimants, whether claims would be paid on a "first come first served" basis or by equitable apportionment, what priorities would be

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lems, 17, 29–30 (1945); Littauer, *The Unfreezing of Foreign Funds*, 45 Col. L. Rev. 132, 135–6, 159–60 (1945). As Mr. Charles R. Carroll, representing the National Foreign Trade Council, New York, N. Y., testified before the House Committee in 1944: "I think the business community would give you very few cases of alien funds made available for payment of American creditors. They [i. e. the Treasury Department] have taken the position they do not want to do any of that now, lest later on another legitimate creditor came along." Hearings before Subcommittee No. 1 of the House Committee on the Judiciary on H. R. 4840, 78th Cong., 2d sess., p. 50. See also testimony of Mr. Otto Sommerich, Chairman of the American Bar Association Special Committee on Custody and Management of Alien Property, *id.*, pp. 33–35. And see *id.* pp. 54, 61. See also the statements in the Brief for the United States in the *Polish Relief* case, quoted *infra*, p. 38.

[17] Compare the Beckworth amendment to the War Claims Act, which would have postponed all payment of debt claims until six months after the War Claims Commission had filed a report on the whole war claims problem. The amendment passed the House, 94 Cong. Rec. 573, but was deleted by the

applied, etc., were all undetermined. These issues were not resolved until Congress added Section 34.[18]

Much property that was frozen was potentially vestible. The Custodian obviously could not vest everything at once; indeed, vesting of certain types of property, notably cash and securities, did

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Senate 94 Cong. Rec. 8759, and dropped in conference. 94 Cong. Rec. 9291.

It is clear that there is no constitutional obligation to pay debt claims of general creditors. *Kogler* v. *Miller*, 288 Fed. 806 (C. A. 3). *See Pusey & Jones Co.* v. *Hanssen*, 261 U. S. 491, 497; *Banco Mexicano* v. *Deutsche Bank*, 289 Fed. 924, 928 (C. A. D. C.), affirmed, 263 U. S. 591; *Sutherland* v. *Norris*, 24 F. 2d 414, 415 (C. A. 3), certiorari denied, 277 U. S. 602; *Synthetic Patents Co.* v. *Sutherland*, 22 F. 2d 491, 494 (C. A. 2), certiorari denied, 276 U. S. 630.

[18] Section 34 was part of a three-pronged legislative scheme for the disposition of enemy property. The other two prongs were: (a) provisions for the return of property to nationals of enemy-occupied countries, Italians, and victims of discrimination, embodied in Section 32 of the Act as added March 8, 1946, 60 Stat. 50, and amended in 1946, 1947 and 1950, 60 Stat. 930, 61 Stat. 784, and 64 Stat. 1080; and (b) the provision prohibiting return to German and Japanese nationals and providing for the payment of the net proceeds of vested property of such nationals into a fund for war claimants, embodied in Section 39 of the Act, as added by the War Claims Act of July 3, 1948, 62 Stat. 1240. All three prongs of this program were under approximately simultaneous consideration by Congress. Thus the provisions which became Sections 32 and 34 of the Act were first introduced in May, 1944, as parts of H. R. 4840, 78th Cong. 2d Sess., while the proposal to make vested German and Japanese property available for payment of war claims was first introduced on November 15, 1943, as H. R. 3672, 78th Cong. 1st Sess. See Gearhart, *Post-war Prospects for Treatment of Enemy Property*, 11 Law and Contemp. Problems 183 (1945).

not begin until June 1945.[19] Plainly, the inevitable delay in vesting some property should not be allowed to have the effect of reducing the amount ultimately available for governmental purposes. Equally plainly, it would be inequitable to let the extent of creditors' rights depend upon the time when the particular debtor's property was vested.

We believe it was a major purpose of freezing to avoid such inconsistency of treatment. Freezing and vesting, both done under authority of Section 5 (b) of the Act, were cognate parts of an integrated program. The 1941 amendments to Section 5 (b) were designed to establish "a complete system of alien property treatment" under which the President would have "flexible powers * * * to deal with the problems that surround alien property or its ownership or control in the manner deemed most effective in each particular case." H. Rep. 1507, 77th Cong., 1st sess., p. 3. In the case of enemy property, freezing thus became a means of preserving the availability of the property for vesting and for the application to it

[19] The classes of property which were to be vested were defined in Executive Order 9193, July 6, 1942, 7 F. R. 5205. That Order was amended on June 8, 1945, Executive Order 9567, 10 F. R. 6917, to provide for vesting of enemy cash and securities. Cash and securities had not been vested previously because they did not call for affirmative administration to the same extent as business enterprises, patents, vessels and interests in decedents' estates.

of whatever policies Congress might establish for vested property.[20]

In this aspect, the freezing regulations, as applied to enemy property, are but an extension of principles established as early as the Civil War. In cases arising under the Confiscation Act of 1862, this Court held that transfers *pendente bello* of enemy property were subject to be set aside or disregarded when the United States decided to exercise its sovereign power of seizure. *Corbett* v. *Nutt,* 10 Wall. 464, 478; *Conrad* v. *Waples,* 96 U. S. 279, 287. Like principles were applied to a transfer made during World War I. *Schrijver* v. *Sutherland,* 19 F. 2d 688 (C. A. D. C.) The basis of this rule is that such a transfer, if given effect, would deprive the United States of its sovereign power to seize all enemy property and apply it in the interest of

[20] See *Propper* v. *Clark,* 337 U. S. 472, 483–484: "The plan for prohibition of unlicensed transactions by foreign nationals comprehends blocking of transfers of credits and vesting of local assets of such nationals under the Trading with the Enemy Act and regulations thereunder. If transactions are blocked, vesting may or may not follow. When the Custodian vests blocked property, title passes to the Custodian and his authority to vest and hold cannot be questioned except as provided in the Trading with the Enemy Act. The freezing order of June 14, 1941, immobilized the assets covered by its terms so that title to them might not shift from person to person, except by license, until the Government could determine whether those assets were needed for prosecution of the threatened war or to compensate our citizens or ourselves for the damages done by the governments of the nationals affected."

the United States to such purposes as Congress might direct. One effect of the freezing regulations was to make these [redacted] prohibitions more explicit, and to advance the critical date of their applicability to the date of a freezing order adopted in anticipation of and not long before the actual outbreak of war.[21]

The present case aptly illustrates the point. Petitioners got their attachment on June 28, 1943. If their debtor's property had been vested on the outbreak of the war—as it constitutionally could have been—they would clearly be general creditors, whose rights were limited to those afforded by Section 34. That they are here claiming greater rights is the result of the fact that not all of enemy property was or could be vested immediately upon the outbreak of the war. Their contention is that they should be allowed to benefit by the delay in vesting. It was a major purpose of freezing to preclude any such consequence.

B. *The terms of the freezing order*

The effectuation of these policies was clearly within the scope of the freezing order. Section 1 of that order (Executive Order 8389, as amended by Executive Order 8785, 6 F. R. 2897, Appendix, pp. 60–61, *infra*) prohibits, *inter alia*, except as licensed,

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[21] This effect of freezing was clearly within the war powers of Congress. See *Propper* v. *Clark*, 337 U. S. 472, 483 n. 16.

> All transfers, withdrawals, or exportations of, or dealings in, any evidences of indebtedness or evidences of ownership of property by any person within the United States

if such transactions involve property of a foreign national. Clearly, the credits owing to Sanko on the books of the Anderson, Clayton & Company were "evidences of indebtedness" within the meaning of this provision. And we think it cannot seriously be disputed that the acquisition by petitioners of an "interest, right, or title" in enemy property would be a "transfer" within the meaning of the order. As this Court held in *Propper* v. *Clark*, 337 U. S. at 486:

> The language of the order prohibits more than payment. It prohibits transfers of credit.[22]

Prior to the 1943 attachments, petitioners were mere creditors, having an *in personam* contract claim but no property interest in any identified property of their debtor. Cf. *Miller* v. *Robertson*, 266 U. S. 243; *Stasi* v. *Markham*, 69 F. Supp. 163 (D. N. J.) They claim that as a result of those attachments, they acquired an "interest,

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[22] See also *Zittman* v. *McGrath*, 341 U. S. 446, 448: "The general effect of the basic order was to forbid 'transactions' in the assets of blocked nationals, including all 'transfers' of such funds."

This effect of the order is confirmed by General Ruling No. 12, pars. (1) and (5), 7 F. R. 2991, *infra*, pp. 61, 63-64.

right or title" in specific property so as to entitle them to a return of that property. Since by the terms of Section 9 (a) they can recover only upon a showing that they have a property interest which they concededly did not have on the date of the freezing, petitioners cannot escape the necessary conclusion that a license or other authorization was needed.[23]

C. *The assertion of a license*

Petitioners assert that by General Ruling No. 12, and the accompanying practice of the Treasury Department, creation of such an interest here was licensed. We believe the assertion disregards the distinction between the validity of a judgment and the effect of a judgment. We do not dispute that the attachment was effective to prevent transfer of the fund to any other person (cf. *Zittman* v. *McGrath*, 341 U. S. 446, 450, 463),

[23] Petitioners suggest that it is not necessary that they have a present "interest, right, or title" and that something which, if licensed, might ripen into such an "interest, right, or title" would give them standing in this action (Br., pp. 11–12). They rely in this connection on *Kaufman* v. *Societe Internationale*, 343 U. S. 156, which held that actual (not potential) stockholders of a corporation could intervene in the corporation's suit under Section 9 (a) in order to protect any interest which they might have adverse to the corporation. We think it clear that standing under Section 9 (a) must rest upon an existing interest. Thus, it has been held that a claimant whose "interest" arose through an unlicensed voluntary transfer might not recover under Section 9 (a). *Okihara* v. *Clark*, 71 F. Supp. 319 (D. Hawaii); *Blank* v. *Clark*, 79 F. Supp. 373 (E. D. Pa.); *Heyden Chemical Corp.* v. *Clark*, 85 F. Supp. 949 (S. D. N. Y.). And see, *State of the Netherlands* v. *Federal Reserve Bank*, 99 F. Supp. 655 (S. D. N. Y.), affirmed on this point by the Court of Appeals for the Second Circuit, January 21, 1953, Docket No. 22328.

except, of course, to the Custodian in the exercise of his paramount right to take over the fund (341 U. S. at 464). And we are not here concerned with what the respective rights of petitioners and the enemy debtors might have been, but for the vesting. The only question here is whether petitioners' attachments could create an "interest, right, or title" in specific property by virtue of which they may terminate the Custodian's power of administration over it and secure its specific return to them without regard to the federal policies applicable to vested enemy property.

We think it clear that the Treasury did not intend to license the creation of such an interest. It wished to permit judicial determination of the rights of the parties, but in so doing it was at pains to prevent such a determination from defeating the federal policies which Congress might determine to make applicable to enemy property.

Thus, paragraph 4 of General Ruling No. 12, 7 F. R. 2991 (Appendix, *infra,* p. 62), while providing that transfers involved in or arising in judicial proceedings shall "be valid and enforceable for the purpose of determining for the parties to the action or proceeding the rights and liabilities therein litigated," further provides that such transfer shall confer no "greater right, power, or privilege with respect to, or interest in, any property in a blocked account than the owner

of such property could create or confer by voluntary act prior to the issuance of an appropriate license." [24]

[24] The purpose and effect of this provision were thus described in Public Circular No. 31, August 2, 1946, 11 F. R. 8351:

"(3) An attachment is a 'transfer.' See paragraph (5) of General Ruling No. 12 where the term 'transfer' is defined as including 'the issuance, docketing, filing, or other levy of or under any judgment, decree, attachment, execution, or other judicial or administrative process or order, or the service of any garnishment.' *An unlicensed attachment, therefore, cannot operate to transfer or create any interest in blocked property.* Nor can it serve as a basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any blocked property.

"(4) Paragraph (4) of General Ruling No. 12 does not constitute a license authorizing the seizure or creation of any interest in blocked property by attachment proceedings or other legal process. This paragraph merely is a formal statement of the position which the Treasury Department has always taken with respect to litigation affecting blocked property—that it does not desire to interfere with such litigation so long as it is clearly understood that the judicial process cannot, without a license or other authorization from the Secretary of the Treasury, operate to transfer or create any interest in blocked property. Thus, the proviso of paragraph (4) specifies that 'no attachment, judgment, decree, lien, execution, garnishment, or other judicial process shall confer or create a greater right, power, or privilege with respect to, or interest in, any property in a blocked account than the owner of such property could create or confer by voluntary act prior to the issuance of an appropriate license.' *In issuing paragraph (4), the Treasury Department did not undertake to decide for the courts whether they should exercise jurisdiction. It simply prescribed that jurisdiction could be exercised only on the basis that if a Treasury license was not issued, the judicial process could not operate to transfer or create any interest in blocked property, nor*

In its brief to the New York Court of Appeals in the *Polish Relief* case, the United States pointed out that:

> Freezing control was intended to protect American creditors and any validation by the courts of unlicensed assignments and transfers of blocked assets will go far toward preventing any future settlement on an equitable basis.[25]

While suggesting that attachment of "the national's contingent power (i. e., contingent upon Treasury authorization) to transfer all his interest in the blocked account"[26] might afford a basis for state court jurisdiction, the United States emphasized that:

> The Federal concern is that the effect, if any, of the attachment be in complete subordination to the Federal control over the assets involved. *If that paramount control be unimpaired,* any useful effect of the attachment which the Court finds permissible under New York statutes, whether as a basis for jurisdiction or otherwise, is outside the scope of the limitations of the Fed-

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could it be the basis for the assertion or recognition of any other right, remedy, power, or privilege with respect to the property." [Italics added.]

[25] Brief for United States of America as *amicus curiae*, p. 12, *Commission for Polish Relief, Limited* v. *Banca Nationala á Rumaniei*, 288 N. Y. 332, 43 N. E. 2d 345 (1942). Copies of this brief were filed with the Court in the *Zittman* case.

[26] *Id.*, at 52; see 341 U. S. at 455.

eral foreign funds legislation. [Italics added.]

Accordingly, it insisted that "while the Federal restriction may leave some scope for the operation of state attachment laws, *e. g.*, insofar as the attachment provides a jurisdictional basis for judgment, the attachment under state laws must fall short of creating any legal interest or relation that collides with the Federal regulation of foreign-owned property."[27] To the same effect see letter of Randolph Paul, General Counsel, U. S. Treasury Dept., *American Banker,* Dec. 11, 1942, p. 3.[27a] We submit that petitioners' contention

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[27] *Id.*, 38; see also p. 53.

[27a] A similar expression of the view that judgments in unlicensed attachment actions should not be allowed to create rights of priority to the detriment of other creditors, was made by Mr. Luxford, at the House hearings on a predecessor to the bill which was enacted as Section 34. In discussing the Treasury's policy of seeking to protect not merely some but all American creditors, Mr. Luxford stated (House Hearings cited p. 25, *supra*, at p. 97):

"A third illustration is the fact that we have never in any way attempted to prevent any creditor from going to court and getting a judgment against his debtor, even though the debtor was in enemy occupied countries, such as Norway and France.

"However, in all these cases we have not permitted the judgment to be satisfied out of blocked assets of nationals in enemy or enemy occupied countries except where the plaintiff could establish ownership to specific property in an account. We have advised all such creditors that they would have to wait until communications were again open with the occupied country.

"The reasons are obvious enough upon reflection. In most cases there is no personal service on the defendant at all;

here, if allowed to prevail, would plainly collide with that federal regulation and impair the paramount federal control.[28]

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suits usually are the result of attachment actions; and secondly, the defendant had no way of knowing he was being sued, or any way of defending if he did happen to know it.

"Third, judgment in the case was usually by default and pursuant to ex parte proceedings.

"Fourth, if we could be satisfied that the claim was bona fide and the evidence was conclusive there are further problems: In the first place *most claims were those of general creditors, and there is no way for us to know what other creditors had claims against the same debtor, or whether the debtor was bankrupt or not.* These reasons were most compelling in our opinion whether the debtor was in enemy or enemy-occupied territory and *quite apart from elements of duress.*" [Italics added.]

Accord: Reeves, *Control of Foreign Funds*, 11 Law and Contemp. Problems 17, 44–49; Reeves, *Policies of the United States Treasury as Applied to Blocked Funds in Litigation*, 113 N. Y. L. J. 2180, 2200 (1945); Berger and Bittker, *Freezing Controls: The Effect of an Unlicensed Transaction*, 47 Col. L. Rev. 398 (1947).

[28] Petitioners and the *amici curiae* assert that the policy of both the Treasury and the Custodian has been inconsistent, and refer to specific instances in which payments to creditors out of blocked or vested property were permitted. Of course, the grant of a license in one case does not imply a license in another case, and the record is clear that specific applications to license payment of the claim of these petitioners have been denied. We wish, however, to comment on the suggestion that the federal agencies involved have acted arbitrarily and inconsistently.

As stated in this brief, it has been the general policy of the Treasury Department to refuse to license payment of creditors' claims, or the accrual in favor of creditors of any right, where there was any likelihood that such action would either result in a preference over other creditors, or dilute the amount of property available for vesting and use in the inter-

D. *The effect of this Court's decisions in the Zittman cases*

Petitioners argue that this Court's prior decisions in the *Zittman* cases are conclusive of the issues here (Br. pp. 8–11). This argument in effect denies any force to the express reservations which the Court made in the *Zittman* cases.

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ests of the United States. In accordance with the clear intent of Congress, this licensing policy was not applied with rigid inflexibility; exceptions were made where special circumstances appeared to warrant them. Thus, the fact that in some cases payment to attaching creditors was licensed by the Treasury (Br. for Leo Zittman, *amicus curiae*, p. 11) should not occasion surprise in view of the announced policy of the Treasury (a) to treat frozen foreign property differently from frozen enemy property (see Testimony of Mr. Luxford, Hearings before Subcommittee No. 1 of the House Committee on the Judiciary, 78th Cong., 2d Sess., on H. R. 4840, pp. 97, 107, 111; Reeves, *The Control of Foreign Funds by the U. S. Treasury*, 11 Law & Contemp. Problems 17, 26–31 (1945); see, *e. g.*, the license and payment out of French property, referred to at pp. 66, 69–70, in the record in the *Zittman* cases); and (b) to allow "American creditors to get paid for current transactions in the process of completion at the time we issued the [freezing] order" (Testimony of Mr. Luxford, *supra*, p. 96; see Reeves, *supra*, p. 27). It was for similar reasons that the Alien Property Custodian issued a license to Banque Mellie Iran permitting it to withdraw from a bank in New York funds deposited with that bank not long before freezing. See *Lyon* v. *Singer*, 339 U. S. 841.

Similarly, while it has been the general policy of the Custodian to deny validity to unlicensed attachment liens, he has on occasion, in the exercise of his power to compromise litigation, permitted payment on such liens. Thus, the case of *Murphy* v. *I. G. Farben-industrie, A. G.*, Supreme Court, New York County, Index No. 11346/1941, referred to in the briefs in the *Zittman* cases, has recently been settled by allow-

In *Zittman* No. 1 this Court had before it a vesting order by which, as it construed the order, the Custodian "put himself in the shoes of the German banks" (341 U. S. at 463), and presented for determination the question "whether any valid interests as against anyone were created by the attachments." (341 U. S. at 473.) It rejected the Custodian's position "that no valid rights *against the German debtors* were acquired by the attachments", and held that "*As against the German debtors,* the attachments and the judgments they secure are valid" (341 U. S. at 463–464; italics added). In effect, it considered the issues before it as if there had been no vesting and the action was one between private creditor and private debtor.[29] It held merely that the Treasury regulations did not preclude the creation by attachment of a lien on frozen property, whether foreign or enemy, which would be valid as between private parties.

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ing the attaching creditor to retain about 6% of the amount attached. In *Murray Oil Products* v. *Mitsui and Co., Ltd.*, 55 F. Supp. 353 (S. D. N. Y., 1944), affirmed, 146 F. 2d 381 (C. A. 2, 1944), the Custodian, after having authorized the enemy debtor to defend on the merits, permitted satisfaction of the district court's judgment in full because he and the Department of Justice did not deem that case a suitable vehicle in which to make the first test of the validity of unlicensed New York attachments.

[29] Mr. Justice Reed and Mr. Justice Burton differed with the majority primarily on this question of the construction of the vesting order (341 U. S. at 466–468).

In doing so, however, it expressly reserved the question whether such a lien would be valid as against the Custodian. It said that "of course, as against the Custodian, exercising the paramount power of the United States, they [the attachments] do not control or limit the federal policy of dealing with alien property" (341 U. S. at 464).

And in *Zittman* No. 2, where the Custodian had taken over the fund for administration, the Court said "All questions as to the petitioners' claims, judgments, or priorities are reserved for decision in the proceedings prescribed by statute" (341 U. S. at 474; see also 341 U. S. at 464).[30]

We do not see how this express reservation of "all" questions as to the petitioner's "claims, judgments, or priorities", can possibly be read as an adjudication that the Custodian must recognize a lien and allow a priority. On the contrary, it is a clear reservation of the very issue which we have here, namely, whether, regardless of what the rights of private parties might be, the Custodian is entitled and indeed required to treat these petitioners as general creditors in view of the controlling policies which Congress has laid

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[30] Zittman, appearing here as *amicus curiae*, argues that "What *Zittman No. 2* thus left open, *Zittman No. 1* concluded." (Brief amicus, p. 8.) We trust that it is unnecessary for us to defend the Court from this suggestion that it was playing games with counsel.

down with respect to the satisfaction of creditors' claims out of vested enemy assets.[31]

Petitioners attack the distinction which this Court drew by asserting that "'validity' is not a fissionable concept" (Br. p. 10). We believe, on the contrary, that there is nothing unusual about the notion that rights conferred by state law may be recognized when they do not infringe upon paramount federal policies, but disregarded when they do. Cf. *United States* v. *Pink*, 315 U. S. 203. In this very context of enemy property the courts have held that transactions which may be valid *inter partes* are subject to being disregarded by the sovereign where they conflict with legitimate sovereign interests. In cases arising under the Confiscation Act of 1862, this Court held that transfers made *pendente bello* of enemy property, although they might be good as between the parties, were "void" as against the United States

[31] The distinction was clearly stated in the concurring and dissenting opinion of Mr. Justice Reed: "In my judgment a valid state attachment, obtained subsequent to the blocking order, is good as between an alien and his creditors. I am also sure that such an attachment has no compelling power upon the Attorney General in his administration of the Trading With the Enemy Act" (341 U. S. 468). As we read the majority opinion, it does not reject this view, but reserves decision on it until the question should be presented in a case such as this. It was apparently because of this reservation that Mr. Justice Reed in his concuring and dissenting opinion stated: "The Court fails to decide the only question of importance presented by this case" (341 U. S. at 465).

when it decided to exercise its sovereign power of seizure. *Corbett* v. *Nutt*, 10 Wall. 464, 478; *Conrad* v. *Waples*, 96 U. S. 279, 287. See also *Schrijver* v. *Sutherland*, 19 F. 2d 688 (C. A. D. C.). Accordingly, the issue here is whether the effect which petitioners would attribute to their state court attachments contravenes paramount federal policies.

The ground of this Court's decision in the first *Zittman* case was that to give effect to the unlicensed attachments as a lien, as between private parties, would not defeat the purposes of the freezing controls. The Court pointed out that under New York law an attachment of bank accounts, unlike the receivership involved in *Propper* v. *Clark*, 337 U. S. 472, did not transfer either possession or title to the sheriff but served merely to prohibit the person served from transferring the funds (341 U. S. at 450). "The effect of the State's action, like that of the federal, was to freeze these funds," 341 U. S. at 463. Because its effect was thus limited, and because the attachment proceedings "do not purport to control the Custodian in the exercise of the federal licensing power, or in the power to vest the *res* if he sees fit to do so for administration" (341 U. S. at 463), it concluded that to recognize the attachment lien as between private parties was not inconsistent with the freezing program or with its decision in *Propper* v. *Clark*, *supra*.

Petitioners' present contention, however, presents a very different issue. They now seek, not recognition of a lien which freezes the funds so as to prevent a private transfer of them, but recovery from the Custodian of the entire interest in the funds. Although this Court's decisions in *Zittman* left unimpaired the power of the Custodian to take over the funds for administration, petitioners by their present action seek to terminate his administration of them and to deny the application to those funds of the policies which Congress has prescribed to govern the disposition of vested enemy assets. To award them the relief which they here seek would render meaningless the reservation in the *Zittman* cases of the Custodian's power to take over the funds for administration, since on petitioners' theory the day after he got possession of the funds they could sue for return, thus immediately enjoining him from doing anything with the funds, and ultimately taking them out of his hands again. Indeed, on their view, even the Custodian's power to license or refuse to license payment would be defeated, for Section 9 (a) by its terms appears to require immediate satisfaction of any judgment thereunder (see Appendix, *infra* pp. 50–52).[32] As one commentator has aptly said: "Such a suit would

[32] Thus, the judgment of the district court (R. 47) is an unqualified judgment that the Custodian pay to petitioners $20,714.84, with interest, poundage fees and costs.

appear to be an attempt to force the issuance of a license with judicial aid." 1 Am. Jour. of Comparative Law 397, 398.

To permit petitioners' present action to prevail would be to say that the effect of the state court attachment was to remove all federal freezing controls over the funds and to entitle the attaching creditor unqualifiedly to payment in full of his default judgment. Such a result would ignore the careful reservation of paramount federal powers which the Treasury repeatedly made, and would totally defeat the application to these frozen enemy funds of the policies prescribed by Congress in Section 34 for the disposition of enemy property.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted.

WALTER J. CUMMINGS, JR.,
Solicitor General.

ROWLAND F. KIRKS,
Assistant Attorney General.

JAMES L. MORRISSON,
Special Assistant to the Attorney General.

JAMES D. HILL,
GEORGE B. SEARLS,
WESTLEY W. SILVIAN,
Attorneys.

JANUARY 1953.

APPENDIX

1. Trading with the Enemy Act, c. 106, 40 Stat. 411, as amended, 50 U. S. C. App. 1, *et seq.*:

* * * * * *

Sec. 5, as amended by the First War Powers Act of 1941, c. 593, Sec. 301, 55 Stat. 839, 50 U. S. C. App. 5:

(b) (1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States;

and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; * * * and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this subdivision.

* * * * * *

Sec. 9. [as amended by 42 Stat. 511, 45 Stat. 271, 50 Stat. 784] (a) That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor

by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided,* That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as

provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

(e) No money or other property shall be returned nor any debt allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States * * *; nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917, and as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder; nor shall a debt be allowed under this section unless notice of the claim has been filed, or application therefor has been made, prior to the date of the enactment of the Settlement of War Claims Act of 1928.

(f) Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court.

* * * * *

SEC. 34. [as added by the Act of August 8, 1946, 60 Stat. 925] (a) Any property or interest vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the net proceeds thereof, shall be equitably applied by the Custodian in accordance with the provisions of this section to the payment of debts owed by the person who owned such property or interest immediately prior to its vesting in or transfer to the Alien Property Custodian. No debt claim shall be allowed under this section if it was not due and owing at the time of such vesting or transfer, or if it arose from any action or transactions prohibited by or pursuant to this Act and not licensed or otherwise authorized pursuant thereto, or (except in the case of debt claims acquired by the Custodian) if it was at the time of such vesting or transfer due and owing to any person who has since the beginning of the war been convicted of violation of this Act, as amended, sections 1–6 of the Criminal Code (18 U. S. C. 1–6), title I of the Act of June 15, 1917 (ch. 30, 40 Stat. 217), as amended; the Act of April 20, 1918 (ch. 59, 40 Stat. 534), as amended; the Act of June 8, 1934 (ch. 327, 52 Stat. 631), as amended; the Act of January 12, 1938 (ch. 2, 52 Stat. 3); title I, Alien Registration Act, 1940 (ch. 439, 54 Stat. 670); the Act of October 17, 1940 (ch. 897, 54 Stat. 1201); or the Act of June 25, 1942 (ch. 447, 56 Stat. 390). Any defense to the payment of such claims which would have been available to the debtor shall be available to the Custodian, except that the period from and after the beginning of the war shall not be in-

cluded for the purpose of determining the application of any statute of limitations. Debt claims allowable hereunder shall include only those of citizens of the United States or of the Philippine Islands; those of corporations organized under the laws of the United States or any State, Territory, or possession thereof, or the District of Columbia or the Philippine Islands; those of other natural persons who are and have been since the beginning of the war residents of the United States and who have not during the war been interned or paroled pursuant to the Alien Enemy Act (50 U. S. C. 21); and those acquired by the Custodian. Legal representatives (whether or not appointed by a court in the United States) or successors in interest by inheritance, devise, bequest, or operation of law of debt claimants, other than persons who would themselves be disqualified hereunder from allowance of a debt claim, shall be eligible for payment to the same extent as their principals or predecessors would have been.

(b) The Custodian shall fix a date or dates after which the filing of debt claims in respect of any or all debtors shall be barred, and may extend the time so fixed, and shall give at least sixty days' notice thereof by publication in the Federal Register. In no event shall the time extend beyond the expiration of two years from the date of the last vesting in or transfer to the Custodian of any property or interest of a debtor in respect of whose debts the date is fixed, or from the date of enactment of this section, whichever is later. No debt shall be paid prior to the expiration of one hundred and twenty days after publication

of the first such notice in respect of the debtor, nor in any event shall any payment of a debt claim be made out of any property or interest or proceeds in respect of which a suit or proceeding pursuant to this Act for return is pending and was instituted prior to the expiration of such one hundred and twenty days.

(c) The Custodian shall examine the claims, and such evidence in respect thereof as may be presented to him or as he may introduce into the record, and shall make a determination, with respect to each claim, of allowance or disallowance, in whole or in part.

(d) Payment of debt claims shall be made only out of such money included in, or received as net proceeds from the sale, use, or other disposition of, any property or interest owned by the debtor immediately prior to its vesting in or transfer to the Alien Property Custodian, as shall remain after deduction of (1) the amount of the expenses of the Office of Alien Property Custodian (including both expenses in connection with such property or interest or proceeds thereof, and such portion as the Custodian shall fix of the other expenses of the Office of Alien Property Custodian), and of taxes, as defined in section 36 hereof, paid by the Custodian in respect of such property or interest or proceeds, and (2) such amount, if any, as the Custodian may establish as a cash reserve for the future payment of such expenses and taxes. If the money available hereunder for the payment of debt claims against the debtor is insufficient for the satisfaction of all claims allowed by the Custodian, ratable payments shall be made in accordance with subsection (g) hereof

to the extent permitted by the money available and additional payments shall be made whenever the Custodian shall determine that substantial further money has become available, through liquidation of any such property or interest or otherwise. The Custodian shall not be required through any judgment of any court, levy of execution, or otherwise to sell or liquidate any property or interest vested in or transferred to him, for the purpose of paying or satisfying any debt claim.

(e) If the aggregate of debt claims filed as prescribed does not exceed the money from which, in accordance with subsection (d) hereof, payment may be made, the Custodian shall pay each claim to the extent allowed, and shall serve by registered mail, on each claimant whose claim is disallowed in whole or in part, a notice of such disallowance. Within sixty days after the date of mailing of the Custodian's determination, any debt claimant whose claim has been disallowed in whole or in part may file in the District Court of the United States for the District of Columbia a complaint for review of such disallowance naming the Custodian as defendant. Such complaint shall be served on the Custodian. The Custodian, within forty-five days after service on him, shall certify and file in said court a transcript of the record of proceedings in the Office of Alien Property Custodian with respect to the claim in question. Upon good cause shown such time may be extended by the court. Such record shall include the claim as filed, such evidence with respect thereto as may have been presented to the Custodian or introduced into the record by

him, and the determination of the Custodian with respect thereto, including any findings made by him. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered to and excluded by the Custodian, or could not reasonably have been adduced before him or was not available to him. The court shall enter judgment affirming, modifying, or reversing the Custodian's determination, and directing payment in the amount, if any, which it finds due.

(f) If the aggregate of debt claims filed as prescribed exceeds the money from which, in accordance with subsection (d) hereof, payment may be made, the Custodian shall prepare and serve by registered mail on all claimants a schedule of all debt claims allowed and the proposed payment to each claimant. In preparing such schedule, the Custodian shall assign priorities in accordance with the provisions of subsection (g) hereof. Within sixty days after the date of mailing of such schedule, any claimant considering himself aggrieved may file in the District Court of the United States for the District of Columbia a complaint for review of such schedule, naming the Custodian as defendant. A copy of such complaint shall be served upon the Custodian and on each claimant named in the schedule. The Custodian, within forty-five days after service on him, shall certify and file in said court a transcript of the record of proceedings in the Office of Alien Property Custodian with respect to such schedule. Upon good cause shown such time may be extended by the court. Such record shall include the claims in question as filed, such evidence

with respect thereto as may have been presented to the Custodian or introduced into the record by him, any findings or other determinations made by the Custodian with respect thereto, and the schedule prepared by the Custodian. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered to and excluded by the Custodian or could not reasonably have been adduced before him or was not available to him. Any interested debt claimant who has filed a claim with the Custodian pursuant to this section, upon timely application to the court, shall be permitted to intervene in such review proceedings. The court shall enter judgment affirming or modifying the schedule as prepared by the Custodian and directing payment, if any be found due, pursuant to the schedule as affirmed or modified and to the extent of the money from which, in accordance with subsection (d) hereof, payment may be made. Pending the decision of the court on such complaint for review, and pending final determination of any appeal from such decision, payment may be made only to an extent, if any, consistent with the contentions of all claimants for review.

(g) Debt claims shall be paid in the following order of priority: (1) Wage and salary claims, not to exceed $600; (2) claims entitled to priority under sections 191 and 193 of title 31 of the United States Code, except as provided in subsection (h) hereof; (3) all other claims for services rendered, for expenses incurred in connection with such services, for rent, for goods and materials delivered to the debtor, and for payments made to the debtor for goods or services not received by the

claimant; (4) all other debt claims. No payment shall be made to claimants within a subordinate class unless the money from which, in accordance with subsection (d) hereof, payment may be made permits payments in full of all allowed claims in every prior class.

(h) No debt of any kind shall be entitled to priority under any law of the United States or any State, Territory, or possession thereof, or the District of Columbia, solely by reason of becoming a debt due or owing to the United States as a result of its acquisition by the Alien Property Custodian.

(i) The sole relief and remedy available to any person seeking satisfaction of a debt claim out of any property or interest which shall have been vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the proceeds thereof, shall be the relief and remedy provided in this section, and suits for the satisfaction of debt claims shall not be instituted, prosecuted, or further maintained except in conformity with this section: *Provided,* That no person asserting any interest, right, or title in any property or interest or proceeds acquired by the Alien Property Custodian, shall be barred from proceeding pursuant to this Act for the return thereof, by reason of any proceeding which he may have brought pursuant to this section; nor shall any security interest asserted by the creditor in any such property or interest or proceeds be deemed to have been waived solely by reason of such proceeding. The Alien Property Custodian shall treat all debt claims now filed

with him as claims filed pursuant to this section. Nothing contained in this section shall bar any person from the prosecution of any suit at law or in equity against the original debtor or against any other person who may be liable for the payment of any debt for which a claim might have been filed hereunder. No purchaser, lessee, licensee, or other transferee of any property or interest from the Alien Property Custodian shall, solely by reason of such purchase, lease, license, or transfer, become liable for the payment of any debt owed by the person who owned such property or interest prior to its vesting in or transfer to the Alien Property Custodian. Payment by the Alien Property Custodian to any debt claimant shall constitute, to the extent of payment, a discharge of the indebtedness represented by the claim.

* * * * *

SEC. 39. [as added by the Act of July 3, 1948, 62 Stat. 1240, 1246] No property or interest therein of Germany, Japan, or any national of either such country vested in or transferred to any officer or agency of the Government at any time after December 17, 1941, pursuant to the provisions of this Act, shall be returned to former owners thereof or their successors in interest, and the United States shall not pay compensation for any such property or interest therein. The net proceeds remaining upon the completion of administration, liquidation, and disposition pursuant to the provisions of this Act of any such property or interest therein shall be covered into the Treasury at the earliest practicable date. Nothing in this section shall be construed to repeal

or otherwise affect the operation of the provisions of section 32 of this Act or of the Philippine Property of 1946.

* * * * * *

2. Executive Order No. 8389, April 10, 1940, 5 F. R. 1400, as amended by Executive Order 8785, June 14, 1941, 6 F. R. 2897:

By virtue of and pursuant to the authority vested in me by Section 5 (b) of the Act of October 6, 1917 (40 Stat. 415), as amended, by virtue of all other authority vested in me, and by virtue of the existence of a period of unlimited national emergency, and finding that this Order is in the public interest and is necessary in the interest of national defense and security, I, FRANKLIN D. ROOSEVELT, PRESIDENT OF THE UNITED STATES OF AMERICA, do prescribe the following:

* * * * * *

SECTION 1. All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise, if (i) such transactions are by, or on behalf of, or pursuant to the direction of any foreign country designated in this Order, or any national thereof, or (ii) such transactions involve property in which any foreign country designated in this Order, or any national thereof, has at any time on or since the effective date of this Order had any interest of any nature whatsoever, direct or indirect:

A. All transfers of credit between any banking institutions within the United States; and all transfers of credit between any banking insti-

tution within the United States and any banking institution outside the United States (including any principal, agent, home office, branch, or correspondent, outside the United States, of a banking institution within the United States);

B. All payments by or to any banking institution within the United States;

C. All transactions in foreign exchange by any person within the United States;

D. The export or withdrawal from the United States, or the earmarking of gold or silver coins or bullion or currency, by any person within the United States;

E. All transfers, withdrawals, or exportations of, or dealings in, any evidences of indebtedness or evidences of ownership of property by any person within the United States; and

F. Any transaction for the purpose or which has the effect of evading or avoiding the foregoing prohibitions.

* * * * *

3. General Ruling No. 12, April 21, 1942, 7 F.R. 2991:

(1) Unless licensed or otherwise authorized by the Secretary of the Treasury, (a) any transfer after the effective date of [Executive Order No. 8389, see General Ruling No. 4, par. (1), *supra*] is null and void to the extent that it is (or was) a transfer of any property in a blocked account at the time of such transfer; and (b) no transfer after the effective date of the Order shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any property while in a blocked account (irrespective of whether such property was

in a blocked account at the time of such transfer).

(2) Unless licensed or otherwise authorized by the Secretary of the Treasury, no transfer before the effective date of the Order shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any property while in a blocked account unless the person with whom such blocked account is held or maintained had written notice of the transfer or by any written evidence had recognized such transfer prior to the effective date of the Order.

(3) Unless otherwise provided, an appropriate license or other authorization issued by the Secretary of the Treasury before, during or after a transfer shall validate such transfer or render it enforceable to the same extent as it would be valid or enforceable but for the provisions of section 5 (b) of the Trading with the Enemy Act, as amended, and Order, regulations, instructions and rulings issued thereunder.

(4) Any transfer affected by the Order and/or this general ruling and involved in, or arising out of, any action or proceeding in any Court within the United States shall, so far as affected by the Order and/or this general ruling, be valid and enforceable for the purpose of determining for the parties to the action or proceeding the rights and liabilities therein litigated: *Provided, however,* That no attachment, judgment, decree, lien, execution, garnishment, or other judicial process shall confer or create a greater right, power, or privilege with respect to, or interest in, any property in a blocked account than the owner of such property could create or confer by volun-

tary act prior to the issuance of an appropriate license.

(5) For the purposes of this general ruling:

(a) The term "transfer" shall mean any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and without limitation upon the foregoing shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the appointment of any agent, trustee, or other fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or the levy of or under any judgment, decree, attachment, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition, or the exercise of any power of appointment, power of attorney, or other power: *Provided, however,* That the term "transfer" shall not be deemed to include transfers by operation of law.

(b) The term "property" includes gold, silver, bullion, currency, coin, credit, securities (as that term is defined in section 2 (1) of the Securities Act of 1933, as amended), bills of exchange, notes, drafts, acceptances, checks, letters of credit, book

credits, debts, claims, contracts, negotiable documents of title, mortgages, liens, annuities, insurance policies, options and futures in commodities, and evidences of any of the foregoing. The term "property" shall not, except to the extent indicated, be deemed to include chattels or real property.

* * * * *

4. Assets of and claims against Sanko Kabusiki Kaisya (formerly C. Itoh & Co., Ltd.) received by and filed with the Office of Alien Property.

a. Assets (Account No. 39-21639)—$36,236.02.

b. Claims—$192,371.38 identified by the following Notice of Claim numbers:

1307—$528.25 claimed by James E. Fox & Co. as reimbursement for payment of customs duties.

2022—$20,714.84 claimed by Orvis Bros. for margins in connection with cotton futures.

4044—$6,717.22 claimed by Jenks Gwynne & Co. for margins in connection with cotton futures.

8723—$26,499.01 claimed by Bond, McEnany & Co. as liability on loan account covering cotton transactions.

18940—$136,546.96 and Yen 100,056.11 claimed by Yokohama Specie Bank for liabilities on bills of exchange.

33489—$415.51 claimed by Hunt, Hill & Betts for fees for legal services.

33853—$174.37 claimed by John J. McCloskey for poundage fee.

34646—$648.95 claimed by National City Bank for liabilities for bills of exchange.

39371—$126.27 claimed by Attorney General for collection expenses.

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